

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LONNIE LEE POSLOF,

Plaintiff,

v.

MTA KRATZ, et al.,

Defendants.

CASE NO. 1:05-CV-00386-OWW-LJO-P

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND

(Doc. 1)

I. Screening Order

A. Screening Requirement

Plaintiff Lonnie Lee Poslof (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on March 23, 2005.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

///

1 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
2 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
3 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467
4 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt
5 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this
6 standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg.
7 Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most
8 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395
9 U.S. 411, 421 (1969).

10 B. Plaintiff's Claims

11 The events at issue in the instant action allegedly occurred at Pleasant Valley State Prison
12 in Coalinga, where plaintiff is presently incarcerated. Plaintiff names Warden James A. Yates,
13 Medical Technical Assistant Kratz, and Doctor Colton as defendants.

14 Plaintiff alleges claims for relief for violation of the Eighth Amendment. In addition,
15 plaintiff appears to be alleging a claim for relief for violation of 42 U.S.C. § 12132 (Americans with
16 Disabilities Act) and 29 U. S. C. § 794 (Rehabilitation Act). Plaintiff has not alleged sufficient facts
17 in support of any of his claims. The conclusory allegations that defendants deprived him of health
18 care, failed to meet his needs, failed to reasonably accommodate him, and refused to provide him
19 with privileges equal to those of non-disabled inmates are insufficient to state any claims for relief.
20 The court will provide plaintiff with the opportunity to file an amended complaint and will provide
21 plaintiff with the applicable legal standards for him to review.

22 Plaintiff's complaint was accompanied by a significant number of exhibits. Plaintiff is
23 informed that it is not necessary for him to support his complaint with exhibits, although he may do
24 so if he wishes. If plaintiff chooses to support his complaint with exhibits, the exhibits must be
25 specifically incorporated by reference. Fed. R. Civ. P. 10(c). This requires that plaintiff, in his
26 complaint, cite the exhibit he is referencing in support of his allegations, and if the exhibit is multiple
27 pages, cite to the page. The court will not review unincorporated exhibits submitted with a
28 complaint.

1. Linkage Requirement

The Civil Rights Act under which this action was filed provides:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

2. Eighth Amendment Medical Care Claims

A prisoner’s claim of inadequate medical care does not constitute cruel and unusual punishment unless the mistreatment rises to the level of “deliberate indifference to serious medical needs.” Estelle v. Gamble, 429 U.S. 97, 106 (1976). The “deliberate indifference” standard involves an objective and a subjective prong. First, the alleged deprivation must be, in objective terms, “sufficiently serious.” Farmer v. Brennan, 511 U.S. 825, 834 (1994) (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Second, the prison official must act with a “sufficiently culpable state of mind,” which entails more than mere negligence, but less than conduct undertaken for the very purpose of causing harm. Farmer v. Brennan, 511 U.S. at 837. A prison official does not act in a deliberately indifferent manner unless the official “knows of and disregards an excessive risk to inmate health or safety.” Id.

In applying this standard, the Ninth Circuit has held that before it can be said that a prisoner’s civil rights have been abridged, “the indifference to his medical needs must be substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of action.”

1 Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), citing Estelle, 429 U.S. at
 2 105-06. “[A] complaint that a physician has been negligent in diagnosing or treating a medical
 3 condition does not state a valid claim of medical mistreatment under the Eighth Amendment.
 4 Medical malpractice does not become a constitutional violation merely because the victim is a
 5 prisoner.” Estelle v. Gamble, 429 U.S. at 106; see also Anderson v. County of Kern, 45 F.3d 1310,
 6 1316 (9th Cir. 1995); McGuckin v. Smith, 974 F.2d 1050, 1050 (9th Cir. 1992), overruled on other
 7 grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). Even gross
 8 negligence is insufficient to establish deliberate indifference to serious medical needs. See Wood
 9 v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). A prisoner’s mere disagreement with
 10 diagnosis or treatment does not support a claim of deliberate indifference. Sanchez v. Vild, 891 F.2d
 11 240, 242 (9th Cir. 1989).

12 Deliberate indifference can be manifested by prison guards intentionally denying or delaying
 13 access to medical care or intentionally interfering with the treatment once prescribed. Estelle v.
 14 Gamble, 429 U.S. at 104-05. However, where a prisoner alleges a delay in receiving medical
 15 treatment, the prisoner must allege that the delay led to further injury. McGuckin v. Smith, 974 F.2d
 16 1050, 1060 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133,
 17 1136 (9th Cir. 1997); Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir.
 18 1985).

19 3. ADA and RA Claims

20 Title II of the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act
 21 (RA) “both prohibit discrimination on the basis of disability.” Lovell v. Chandler, 303 F.3d 1039,
 22 1052 (9th Cir. 2002). Title II of the ADA provides that “no qualified individual with a disability
 23 shall, by reason of such disability, be excluded from participation in or be denied the benefits of the
 24 services, programs, or activities of a public entity, or be subject to discrimination by such entity.”
 25 42 U.S.C. § 12132. Section 504 of the RA provides that “no otherwise qualified individual with a
 26 disability . . . shall, solely by reason of her or his disability, be excluded from the participation in,
 27 be denied the benefits of, or be subjected to discrimination under any program or activity receiving
 28 Federal financial assistance” 29 U. S. C. § 794. Title II of the ADA and the RA apply to

inmates within state prisons. Pennsylvania Dept. of Corrections v. Yeskey, 118 S.Ct. 1952, 1955 (1998); see also Armstrong v. Wilson, 124 F.3d 1019, 1023 (9th Cir. 1997); Duffy v. Riveland, 98 F.3d 447, 453-56 (9th Cir. 1996).

“To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a qualified individual with a disability; (2) [he] was excluded from participation in or otherwise discriminated against with regard to a public entity’s services, programs, or activities; and (3) such exclusion or discrimination was by reason of [his] disability.” Lovell, 303 F.3d at 1052. “To establish a violation of § 504 of the RA, a plaintiff must show that (1) [he] is handicapped within the meaning of the RA; (2) [he] is otherwise qualified for the benefit or services sought; (3) [he] was denied the benefit or services solely by reason of [his] handicap; and (4) the program providing the benefit or services receives federal financial assistance.” Id.

4. Claims Against Supervisory Personnel

Liability may not be imposed on supervisory personnel under section 1983 for the actions of their employees under a theory of respondeat superior. When the named defendant holds a supervisory position, the causal link between the defendant and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief under section 1983 for supervisory liability, plaintiff must allege some facts indicating that the defendant either: personally participated in the alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or promulgated or “implemented a policy so deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.’” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Although federal pleading standards are broad, some facts must be alleged to support claims under section 1983. See Leatherman v. Tarrant County Narcotics Unit, 507 U.S. 163, 168 (1993).

C. Conclusion

The court finds that plaintiff’s complaint does not contain any claims upon which relief may be granted under section 1983, the ADA, or the RA. The court will provide plaintiff with the

1 opportunity to file an amended complaint curing the deficiencies identified by the court in this order.

2 Plaintiff is informed he must demonstrate in his complaint how the conditions complained
3 of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d
4 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is
5 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or
6 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.
7 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,
8 743 (9th Cir. 1978).

9 Finally, plaintiff is advised that Local Rule 15-220 requires that an amended complaint be
10 complete in itself without reference to any prior pleading. As a general rule, an amended complaint
11 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once
12 plaintiff files an amended complaint, the original pleading no longer serves any function in the case.
13 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
14 of each defendant must be sufficiently alleged.

15 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state any claims
17 upon which relief may be granted under section 1983;
- 18 2. The Clerk's Office shall send plaintiff a civil rights complaint form;
- 19 3. Within **thirty (30) days** from the date of service of this order, plaintiff shall file an
20 amended complaint; and
- 21 4. If plaintiff fails to file an amended complaint in compliance with this order, the court
22 will recommend that this action be dismissed, with prejudice, for failure to state a
23 claim upon which relief may be granted.

24 IT IS SO ORDERED.

25 **Dated: August 5, 2005**
b9ed48

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE